



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS-2019-0061]

RIN 0750-AK52

**Defense Federal Acquisition Regulation Supplement: Modification
of DFARS Clause "Protection Against Compromising Emanations"
(DFARS Case 2019-D015)**

AGENCY: Defense Acquisition Regulations System, Department of
Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense
Federal Acquisition Regulation Supplement (DFARS) to update a
reference in an existing clause.

DATES: Effective **[Insert date of publication in the FEDERAL
REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone
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SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the clause at DFARS 252.239-7000,
Protection Against Compromising Emanations, to update a
reference within the clause to the current TEMPEST standard.

This clause is included in solicitations and contracts involving information technology that requires protection against compromising emanations. The clause requires contractors to provide or use only information technology, as specified by the Government, that has been accredited to meet the appropriate information assurance requirements of the National Security Agency National TEMPEST standards or other standards specified by the contract. The clause further identifies NACSEM No. 5100 and NACSEM No. 5100A as examples of TEMPEST Standards. NSTISSAM TEMPEST 1-92, Compromising Emanations Laboratory Test Requirements, Electromagnetics (U) is the most current TEMPEST standard and supersedes the NACSEM standards identified in the clause. This rule updates the example provided in the clause to the current standard.

II. Discussion and Analysis

The modification of this DFARS text implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the

DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the *Federal Register* at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. The DoD Task Force reviewed the requirements of DFARS clause 252.239-7000, determined that the clause should be updated, and recommended its modification in the DFARS.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only updates a reference in an existing clause. The rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items

IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of

the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule is merely updating a reference in an existing clause.

V. Executive Orders 12866 and 13563

E.O. 12866 and E.O. 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VIII. Paperwork Reduction Act

This rule modifies a clause included in a currently approved collection under Office of Management and Budget (OMB) Control Number 0704-0341, DFARS Part 239, Acquisition of Information Technology, and associated clauses at DFARS 252.239-7000. However, this rule does not affect the requirements of the currently approved collection or add any new collection requirements that necessitate OMB approval under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 239 and 252 are amended as follows:

1. The authority citation for parts 239 and 252 continue to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

2. Amend section 239.7102-2 by revising paragraph (a) to read as follows:

239.7102-2 Compromising emanations—TEMPEST or other standard.

* * * * *

(a) The required protections, i.e., an established National TEMPEST standard (e.g., NSTISSAM TEMPEST 1-92) or a standard used by other authority;

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 252.239-7000 by—

a. Removing the clause date “(JUN 2004)” and adding “(OCT 2019)” in its place; and

b. Revising paragraph (a)(1) to read as follows:

252.239-7000 Protection Against Compromising Emanations.

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(a) * * *

(1) The National Security Agency National TEMPEST Standards (NSTISSAM TEMPEST 1-92, Compromising Emanations Laboratory Test Requirements, Electromagnetics (U)); or

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